

AMENDED IN SENATE AUGUST 25, 2003

AMENDED IN SENATE JULY 2, 2003

AMENDED IN ASSEMBLY JUNE 3, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1086

Introduced by Assembly Member Laird

February 20, 2003

An act to amend Section 1368 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1086, as amended, Laird. Common interest developments: transfer of title.

Existing law requires that an owner of a separate interest in a common interest development provide certain items to a prospective purchaser prior to transfer of title, and prohibits an association from imposing or collecting any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and a specified charge for providing certain information upon request.

This bill would additionally prohibit a community service organization or similar entity, as defined, from imposing or collecting any assessment, penalty, or fee in connection with a transfer of title as described above, except as specified. The bill would state that a community association manager is an agent, as specified, of the

association, and would state that the bill does not expand or diminish the authority of an association or its agent to charge a reasonable fee for services in connection with providing information and documentation, as specified. This bill would also make other technical, nonsubstantive changes.

This bill would incorporate additional changes in Section 1368 of the Civil Code, proposed by AB 512, to be operative only if AB 512 and this bill are both chaptered and become effective January 1, 2004, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1368 of the Civil Code is amended to
2 read:

3 1368. (a) The owner of a separate interest, other than an
4 owner subject to the requirements of Section 11018.6 of the
5 Business and Professions Code, shall, as soon as practicable before
6 transfer of title to the separate interest or execution of a real
7 property sales contract therefor, as defined in Section 2985,
8 provide the following to the prospective purchaser:

9 (1) A copy of the governing documents of the common interest
10 development, including a copy of the association's articles of
11 incorporation, or, if not incorporated, a statement in writing from
12 an authorized representative of the association that the association
13 is not incorporated.

14 (2) If there is a restriction in the governing documents limiting
15 the occupancy, residency, or use of a separate interest on the basis
16 of age in a manner different from that provided in Section 51.3, a
17 statement that the restriction is only enforceable to the extent
18 permitted by Section 51.3 and a statement specifying the
19 applicable provisions of Section 51.3.

20 (3) A copy of the most recent documents distributed pursuant
21 to Section 1365.

22 (4) A true statement in writing obtained from an authorized
23 representative of the association as to the amount of the
24 association's current regular and special assessments and fees, any
25 assessments levied upon the owner's interest in the common
26 interest development that are unpaid on the date of the statement,



1 and any monetary fines or penalties levied upon the owner's
2 interest and unpaid on the date of the statement. The statement
3 obtained from an authorized representative shall also include true
4 information on late charges, interest, and costs of collection which,
5 as of the date of the statement, are or may be made a lien upon the
6 owner's interest in a common interest development pursuant to
7 Section 1367 or 1367.1.

8 (5) A copy or a summary of any notice previously sent to the
9 owner pursuant to subdivision (h) of Section 1363 that sets forth
10 any alleged violation of the governing documents that remains
11 unresolved at the time of the request. The notice shall not be
12 deemed a waiver of the association's right to enforce the governing
13 documents against the owner or the prospective purchaser of the
14 separate interest with respect to any violation. This paragraph shall
15 not be construed to require an association to inspect an owner's
16 separate interest.

17 (6) A copy of the preliminary list of defects provided to each
18 member of the association pursuant to Section 1375, unless the
19 association and the builder subsequently enter into a settlement
20 agreement or otherwise resolve the matter and the association
21 complies with Section 1375.1. Disclosure of the preliminary list
22 of defects pursuant to this paragraph does not waive any privilege
23 attached to the document. The preliminary list of defects shall also
24 include a statement that a final determination as to whether the list
25 of defects is accurate and complete has not been made.

26 (7) A copy of the latest information provided for in Section
27 1375.1.

28 (8) Any change in the association's current regular and special
29 assessments and fees which have been approved by the
30 association's board of directors, but have not become due and
31 payable as of the date disclosure is provided pursuant to this
32 subdivision.

33 (b) Upon written request, an association shall, within 10 days
34 of the mailing or delivery of the request, provide the owner of a
35 separate interest with a copy of the requested items specified in
36 paragraphs (1) to (8), inclusive, of subdivision (a). The association
37 may charge a fee for this service that may not exceed the
38 association's reasonable cost to prepare and reproduce the
39 requested items.

(c) (1) Subject to the provisions of paragraph (2), neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

(A) An amount not to exceed the association's actual costs to change its records.

(B) An amount authorized by subdivision (b).

(2) The amendments made to this subdivision by the act adding this paragraph do not apply to a community service organization or similar entity that is described in subparagraph (A) or (B):

(A) The community service organization or similar entity satisfies both of the following requirements:

(i) The community service organization or similar entity was established prior to February 20, 2003.

(ii) The community service organization or similar entity exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

(B) The community service organization or similar entity satisfies all of the following requirements:

(i) The community service organization or similar entity is not an organization or entity described in subparagraph (A).

(ii) The community service organization or similar entity was established *and received a transfer fee* prior to January 1, 2004.

(iii) On and after January 1, 2006, the community service organization or similar entity offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

(I) Paying the fee or charge at the time of transfer.

(II) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the community service organization or similar entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, a "community service organization or similar entity" means a nonprofit entity, other than

an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A “community service organization or similar entity” does not include an entity that has been organized solely to raise money and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys’ fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

SEC. 1.5. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, *including any operating rules, and* including a copy of the association’s articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent

1 permitted by Section 51.3 and a statement specifying the
2 applicable provisions of Section 51.3.

3 (3) A copy of the most recent documents distributed pursuant
4 to Section 1365.

5 (4) A true statement in writing obtained from an authorized
6 representative of the association as to the amount of the
7 association's current regular and special assessments and fees, any
8 assessments levied upon the owner's interest in the common
9 interest development that are unpaid on the date of the statement,
10 and any monetary fines or penalties levied upon the owner's
11 interest and unpaid on the date of the statement. The statement
12 obtained from an authorized representative shall also include true
13 information on late charges, interest, and costs of collection which,
14 as of the date of the statement, are or may be made a lien upon the
15 owner's interest in a common interest development pursuant to
16 Section 1367 or 1367.1.

17 (5) A copy or a summary of any notice previously sent to the
18 owner pursuant to subdivision (h) of Section 1363 that sets forth
19 any alleged violation of the governing documents that remains
20 unresolved at the time of the request. The notice shall not be
21 deemed a waiver of the association's right to enforce the governing
22 documents against the owner or the prospective purchaser of the
23 separate interest with respect to any violation. This paragraph shall
24 not be construed to require an association to inspect an owner's
25 separate interest.

26 (6) A copy of the preliminary list of defects provided to each
27 member of the association pursuant to Section 1375, unless the
28 association and the builder subsequently enter into a settlement
29 agreement or otherwise resolve the matter and the association
30 complies with Section 1375.1. Disclosure of the preliminary list
31 of defects pursuant to this paragraph ~~shall~~ *does* not waive any
32 privilege attached to the document. The preliminary list of defects
33 shall also include a statement that a final determination as to
34 whether the list of defects is accurate and complete has not been
35 made.

36 (7) A copy of the latest information provided for in Section
37 1375.1.

38 (8) Any change in the association's current regular and special
39 assessments and fees which have been approved by the
40 association's board of directors, but have not become due and



1 payable as of the date disclosure is provided pursuant to this
2 subdivision.

3 (b) Upon written request, an association shall, within 10 days
4 of the mailing or delivery of the request, provide the owner of a
5 separate interest with a copy of the requested items specified in
6 paragraphs (1) to (8), inclusive, of subdivision (a). The association
7 may charge a fee for this service ~~which shall~~ *that may* not exceed
8 the association's reasonable cost to prepare and reproduce the
9 requested items.

10 (c) ~~An association shall not~~ *(1) Subject to the provisions of*
11 *paragraph (2), neither an association nor a community service*
12 *organization or similar entity may impose or collect any*
13 *assessment, penalty, or fee in connection with a transfer of title or*
14 *any other interest except for the following:*

15 (A) *An amount not to exceed* the association's actual costs to
16 change its records ~~and that~~.

17 (B) *An amount* authorized by subdivision (b).

18 (2) *The amendments made to this subdivision by the act adding*
19 *this paragraph do not apply to a community service organization*
20 *or similar entity that is described in subparagraph (A) or (B):*

21 (A) *The community service organization or similar entity*
22 *satisfies both of the following requirements:*

23 (i) *The community service organization or similar entity was*
24 *established prior to February 20, 2003.*

25 (ii) *The community service organization or similar entity exists*
26 *and operates, in whole or in part, to fund or perform environmental*
27 *mitigation or to restore or maintain wetlands or native habitat, as*
28 *required by the state or local government as an express written*
29 *condition of development.*

30 (B) *The community service organization or similar entity*
31 *satisfies all of the following requirements:*

32 (i) *The community service organization or similar entity is not*
33 *an organization or entity described in subparagraph (A).*

34 (ii) *The community service organization or similar entity was*
35 *established and received a transfer fee prior to January 1, 2004.*

36 (iii) *On and after January 1, 2006, the community service*
37 *organization or similar entity offers a purchaser the following*
38 *payment options for the fee or charge it collects at time of transfer:*

39 (I) *Paying the fee or charge at the time of transfer.*

(II) *Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the community service organization or similar entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.*

(3) *For the purposes of this subdivision, a “community service organization or similar entity” means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A “community service organization or similar entity” does not include an entity that has been organized solely to raise money and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.*

(d) *Any person or entity who willfully violates this section shall be is liable to the purchaser of a separate interest which that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys’ fees.*

(e) *Nothing in this section affects the validity of title to real property transferred in violation of this section.*

(f) *In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.*

(g) *For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.*

SEC. 2. *The provisions of this act do not expand or diminish the authority of an association or its agent to charge a reasonable fee to provide information and documentation pursuant to existing law.*

SEC. 3. *Section 1.5 of this bill incorporates amendments to Section 1368 of the Civil Code proposed by both this bill and AB*

1 512. It shall only become operative if (1) both bills are enacted and
2 become effective on or before January 1, 2004, (2) each bill
3 amends Section 1368 of the Civil Code, and (3) this bill is enacted
4 after AB 512, in which case Section 1 of this bill shall not become
5 operative.

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